

*In the Matter of Mark Nordyke, City of East Orange,
Water Department*
DOP Docket No. 2002-3341
(Commissioner of Personnel, decided May 13, 2004)

Mark Nordyke appeals the determination of his layoff rights by the Division of Human Resource Management.

The record in this matter indicates that, effective March 15, 2002, Mr. Nordyke was laid off from his permanent title of Senior Water Meter Repairer in the City of East Orange, Water Department. Mr. Nordyke accepted a demotional opportunity to the title of Water Meter Repairer and his name was placed on the special reemployment list for Senior Water Meter Repairer.

On appeal, Mr. Nordyke states that it was determined that another employee in the Senior Water Meter Repairer title, Mr. Curtis Moore, had one day of seniority over him and that this is incorrect. In fact, he states that he and Mr. Moore were permanently appointed on the same day and that through the tie-breaking process, including his veteran's status, he should not have been demoted. In support of his appeal, Mr. Nordyke provides excerpts from the minutes of the East Orange Board of Water Commissioners' meeting of July 11, 1989. The appellant asserts that these minutes demonstrate that he and Mr. Moore, as well as others, were permanently appointed on the same day. Mr. Nordyke also notes that Mr. Moore's title was changed to Laborer because he could not pass the examination for Assistant Water Meter Repairer. Thus, Mr. Nordyke argues that since no water department actions can be implemented or approved until the Board votes on it, Mr. Moore could not have been appointed on July 10, 1989, the day before the Board meeting. The appellant provides a copy of the certification demonstrating that his appointment to the Assistant Water Meter Repairer title initially was dated July 10, 1989, but was crossed out and July 11, 1989 was typed in because that was when the Board met. Additionally, he states he has Veteran's status and that he was provisionally appointed to the Water Meter Technician title on October 4, 1988.

CONCLUSION

The sole issue in a layoff rights appeal is whether the Division of Human Resource Management (DHRM) properly applied the uniform regulatory criteria found in *N.J.A.C. 4A:8-2.1 et seq.*, in determining layoff rights. The appellant must provide evidence of misapplication of these regulatory criteria in determining layoff rights and must specify a remedy.

In the present matter, the record establishes that Mr. Nordyke received a permanent appointment to the title of Assistant Water Meter Repairer on July 11,

1989. Indeed, a review of the Request for Personnel Action submitted by the City of East Orange in July 1989 and verified by the Department of Personnel (DOP) indicates that Mr. Nordyke's permanent appointment date as an Assistant Water Meter Repairer was July 11, 1989. Further, the certification clearly demonstrates that the appointing authority intended for Mr. Nordyke's permanent appointment date to the Assistant Water Meter Repairer title to be July 11, 1989. However, a review of the Request for Personnel Action submitted by the City of East Orange in July 1989 and verified by DOP indicates that the appointing authority intended for Mr. Moore's title to be changed and he be permanently appointed to the Laborer title effective July 10, 1989. Since the Laborer title is in the non-competitive division, there would be no certification record of his appointment to that title. Further, there is no record that either Mr. Nordyke or Mr. Moore appealed or sought review of their date of permanent appointment at the time they took place. Thus, the appellant's current request for review of a 1989 appointment date is untimely.

As to the minutes Mr. Nordyke submitted with his appeal, the dates provided by the appointing authority on the certification and/or Requests for Personnel Action are the basis on which the Department of Personnel records appointments. Municipal resolutions, minutes from meeting, or other similar types of documentation are not the basis on which the DOP records appointments. In this regard, it is noted that appointments to titles in the competitive division are recorded by transactions consistent with *N.J.A.C. 4A:4-4.8(b)2* that requires the effective date of the requested permanent appointment. Further, *N.J.A.C. 4A:4-1.1(b)* may authorize an appointing authority to make a regular appointment to a title in the noncompetitive division of the career service without an examination. As such, on this record, there is no indication that DHRM did not properly apply the uniform criteria in determining Mr. Nordyke's layoff rights.

Nevertheless, a review of documentation found in Mr. Nordyke's personnel record demonstrates that his demotion to the Water Meter Repairer title was not an intended consequence of the layoff action by the appointing authority. Indeed, on March 18, 2002, the appointing authority provisionally appointed Mr. Nordyke, pending promotional procedures to the Water Inspector title. A review of the job specifications for that title and Mr. Nordyke's former title demonstrates they are sufficiently similar under these unique circumstances to warrant equitable relief on a one time basis. As such, it would be appropriate to certify the special reemployment list for Senior Water Meter Repairer as appropriate for Mr. Nordyke's provisional appointment to the Water Inspector title and to permanently appoint him to that title effective March 18, 2002.

ORDER

Therefore, it is ordered that this appeal be granted in part and that the special reemployment list for Senior Water Meter Repairer be certified as appropriate to Mr. Nordyke's provisional appointment to the Water Inspector title and to permanently appoint him to that title effective March 18, 2002.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.